file at the institution but the case file usually had no formal documents indicating the final disposition of the case or the defendant. [Bill 603-A]

After verdict the court cannot order a plea of not guilty to be entered without defendant's consent and then render judgment upon the verdict. Davis v. State, 38 W 487.

A court is not confined to the imposition of a small fine in sentencing one who is permitted to enter a plea of nolo contendere; the plea is an implied confession, and judgment of conviction follows as a matter of course. Brozosky v. State, 197 W 446, 222 NW 311.

Judicial confessions without corroboration are sufficient to sustain a conviction. Mularkey v. State, 199 W 269, 225 NW 933.

See note to 274.37, on criminal actions, citing Hobbins v. State, 214 W 496, 253 NW 570.

Nolo contendere admits matters alleged in the information when the plea is entered, is a waiver of proof, and places the defendant in the same position as though he had pleaded or had been found guilty by the verdict of a jury. Ellsworth v. State, 258 W 636, 46 NW (2d) 746.

Wisconsin adheres to the common-law principle that a trial court has no power to revise its judgment and sentence in a criminal case after the expiration of the term or after the execution of the sentence has commenced. State ex rel. Reynolds v. County Court, 11 W (2d) 512, 105 NW (2d) 812.

Until execution (providing the term of court has not expired), there is no prohibition under 959.01 or 959.07, Stats. 1963, which precludes a trial court from deferring execution or even imposing a sentence in order to consolidate other matters before the court affecting the same defendant. Weston v. State, 28 W (2d) 136, 135 NW (2d) 820.

972.14 History: 1969 c. 255; Stats. 1969 s. 972.14.

Comment of Judicial Council, 1969: This is a codification of the common-law right of allocution. Its omission is probably not prejudicial error, (see Boehm v. State, 190 Wis. 609), but fairness and good practice dictate its retention. [Bill 603-A]

The right of the accused to be heard as to whether he has anything to say why sentence should not be pronounced against him is not a mere formality. In re Carlson, 176 W 538, 186 NW 722.

972.15 History: 1969 c. 255; Stats. 1969 s. 972.15.

Comment of Judicial Council, 1969: Most judges and attorneys will be surprised to learn that, outside of a provision for Milwaukee county (s. 57.02 (6)), there is presently no statutory authority for presentence investigations. Wisconsin has been a pioneer in this field and obviously the presentence investigation is an integral part of the sentencing practice in this state.

Sub. (2) provides for a disclosure of the contents of the presentence report to the district attorney and the defense. This provision is subject to a great deal of debate nationally. After weighing all factors, the Council believes that the Model Penal Code, s. 7.07 (5) provisions are appropriate whereby the contents are disclosed. The judge may, however, conceal the identity of persons who provided information for the report. This concept is found in subs. (2) and (3) and is consistent with the recommendations of the President's Crime Commission report, The Challenge of Crime in a Free Society, 145, and the American Bar Association's Project on Minimum Standards for Criminal Justice, Sentencing Alternatives and Procedure Standards, s. 4.4. The Division of Corrections was consulted by the Council prior to the adoption of subs. (3) and (4) and indicated that they would not object to these provisions.

Sub. (4) is consistent with ABA Sentencing Alternatives and Procedure Standards, s. 4.3, that presentence reports should not be public records. The information in such reports is often unverified and would in many cases, even if true, cause irreparable harm to informants or the defendant. The information may, of course, upon specific authorization of the court, be made available to any agencies, courts or individuals which have a legitimate need for it. [Bill 603-A]

In determining an appropriate sentence (notwithstanding the absence of express statutory authority) courts may and in fact do widely use the data in presentence investigation reports which contain, typically, pertinent information relating to the defendant's personality, social circumstances, and his prior criminal record (if any). Waddell v. State, 24 W (2d) 364, 129 NW (2d) 201.

CHAPTER 973.

Sentencing.

973.01 History: 1969 c. 255; Stats. 1969 s. 973.01.

Comment of Judicial Council, 1969: Present s. 959.05. [Bill 603-A]

Imposing a determinate, instead of an indeterminate, sentence in the state prison in this case, although error, did not constitute ground for reversal, in view of the provision in 359.05, Stats. 1947, that if a person is sentenced for a definite period for any offense for which he may be sentenced under such section the sentence shall not be void but the person shall be deemed to be sentenced nevertheless as defined and required by such section. Johnson v. State, 254 W 320, 36 NW (2d) 86.

It is a matter of proper legislative consideration to adopt or not a rule giving credit for time spent in jail prior to sentencing. Cheney v. State, 44 W (2d) 454, 171 NW (2d) 339, 174 NW (2d) 1.

A definite sentence to the state prison, except for certain specified crimes, must be construed as an indeterminate sentence, the minimum imprisonment provided by the statute being the minimum sentence and definite sentence being the maximum. The court has no power to add to maximum of an indeterminate sentence imprisonment in the state prison for failure to pay fine and costs. 14 Atty. Gen. 384.

Conviction for the offense of assault with intent to murder or rob as defined in 340.40,

Stats. 1925, requires indeterminate sentence. If parties are repeaters the trial court may, under 359.12, impose an indeterminate sentence. 15 Atty. Gen. 436.

Under 359.05, Stats. 1929, sentence for rape to an indeterminate term is erroneous and the maximum thereof must be considered as the real term of the prisoner; such prisoner is entitled to parole consideration when he has served one-half of the maximum sentence. 19 Atty. Gen. 604.

The governor may commute a definite sentence to an indeterminate sentence and when he does so parole provisions for an indeterminate sentence apply. 20 Atty. Gen. 1050.

Sentence of a court of competent jurisdiction, even though erroneous, controls until modified by appropriate proceedings. The board of control, in granting parole, may take into consideration the fact that the prisoner was erroneously sentenced to an indeterminate term. A person properly sentenced to a determinate term under 340.56 and 359.05, Stats. 1933, is not eligible for parole until he has served one-half term for which he was sentenced. 22 Atty. Gen. 737.

An indeterminate sentence to the state prison under any statute which fixes no minimum term of imprisonment must be for a minimum of one year in view of 359.05 and 359.07, Stats. 1943. An attempt by the court to fix a higher minimum sentence is ineffective. (21 Atty. Gen. 322, overruled.) 32 Atty. Gen. 412.

973.02 History: 1969 c. 255; Stats. 1969 s. 973.02.

Comment of Judicial Council, 1969: Present s. 959.044. (Bill 603-A)

On state, county and municipal jails see notes to various sections of ch. 53.

The creation of 959.044 did not convert an offense formerly a misdemeanor (one year imprisonment with no provision as to the place) into a felony. State ex rel. Gaynon v. Krueger, 31 W (2d) 609, 143 NW (2d) 437.

Imposition of a sentence of confinement to the state prison rather than commitment to an institution for treatment (pursuant to 161.02 (3), Stats. 1959), could not be charged as abuse of discretion, defendant having been charged and found guilty of a single instance of a use of narcotics and there being no evidence to indicate that he was a constant or habitual user or was under the influence of narcotics. State v. Rice, 37 W (2d) 392, 155 NW (2d) 116.

A sentence for a misdemeanor to a state prison contrary to 959.44 (except in the case of a repeater under 939.62 (1) (a), Stats. 1957) is not merely erroneous but is wholly void and the prisoner is entitled on a writ of habeas corpus to have the sentence vacated and to be returned to the trial court for resentencing. 46 Atty. Gen. 269.

973.03 History: 1969 c. 255; Stats. 1969 s. 973.03.

Comment of Judicial Council, 1969: Sub. (1) is present s. 959.06.

Sub. (2) is new. After a defendant receives a prison sentence, he should be at the prison and not at a county jail where he often creates security and disciplinary problems. Nothing herein prevents the misdemeanor sentence from being concurrent or consecutive. [Bill 603-A]

Time served in the state prison upon a second sentence in no way affects the operation of prior concurrent sentences imposed in a trial in another county, which will not begin to run until the prisoner's return to the jurisdiction of that county. 38 Atty. Gen. 544.

973.04 History: 1969 c. 255; Stats. 1969 s. 973.04.

Comment of Judicial Council, 1969: S. 958.06 (3) (b) is restated to give a defendant credit for imprisonment and good time earned under a vacated sentence. [Bill 603-A]

Editor's Note: Sec. 958.06 (3), Stats. 1965, was taken into account in State v. Leonard, 39 W (2d) 461, 159 NW (2d) 577.

973.05 History: 1969 c. 255; Stats. 1969 s. 973.05.

Comment of Judicial Council, 1969: This is present s. 959.055 (1) except that the time that may be granted for a stay of execution to pay a fine is extended from 30 to 60 days. [Bill 603-A]

973.06 History: 1969 c. 255; Stats. 1969 s. 973.06.

Comment of Judicial Council, 1969: This is present s. 959.055 (2) and (3).

Par. (1) (c) is expanded to permit the payment of expert fees in excess of $25. [Bill 603-A]

See note to sec. 1, art. IV, on legislative power generally, citing State ex rel. Sullivan v. District Court, 145 W 138, 142, 130 NW 58, 59.

Expenses of temporarily lodging a probation violator in the county jail are a proper charge against the county if the probationer was convicted in that county. 22 Atty. Gen. 66.

The county is liable for all costs of prosecution of a criminal case, regardless of whether some of such costs are made necessary because a local municipality maintains no jail and the constable must incarcerate his prisoners in the county jail pending issuance of a warrant. 30 Atty. Gen. 488.

Where a trial court commits an accused to a hospital for mental examination pursuant to 357.27 (3), Stats. 1945, the county is liable for the expenses thereof as part of the costs. 34 Atty. Gen. 414.

Fees of witnesses in a criminal case who testify only on counts of which defendant was acquitted are not taxable against him on conviction and fine on other counts. 36 Atty. Gen. 62.

See note to 52.37, citing 45 Atty. Gen. 2.

See note to 59.42, citing 45 Atty. Gen. 128.

973.07 History: 1969 c. 255; Stats. 1969 s. 973.07.

Comment of Judicial Council, 1969: Taken from s. 959.055 (1). [Bill 603-A]

Where a fine is imposed it is proper in all cases to limit the period of imprisonment for its nonpayment. Bonneville v. State, 53 W 680, 11 NW 427.

A commitment until fine and costs are paid, not exceeding 60 days, is valid under sec.

4633, R. S. 1878. Briffit v. State, 58 W 39, 16 NW 39; Hepler v. State, 58 W 46, 16 NW 42.

The provisions of sec. 4633, Stats. 1898, apply to any case where commitment is authorized under any statute. Starry v. State, 115 W 50, 90 NW 1014.

Sec. 4633, Stats. 1898, does not apply to an order for imprisonment or for fine and imprisonment for contempt of court. Schlitz B. Co. v. Washburn B. Co. 122 W 515, 100 NW 832.

Under 353.25, Stats. 1935, the court may commit defendant to the county jail for not to exceed 6 months, until the fine imposed is paid, but cannot commit him to the state prison for such purpose. 25 Atty. Gen. 377.

Where one has been sentenced to pay a fine or be committed to jail upon nonpayment and has served the jail term, an execution against defendant's property may nevertheless issue within the time limited by 272.04, in view 959.055. Interest runs from the date of sentence, pursuant to 272.05 (8). 39 Atty. Gen. 559.

Although under 353.25, Stats. 1951, courts may remit taxable costs they have no authority to remit fines. But under 57.01 and 57.04, execution may be stayed and the defendant placed on probation. If execution is stayed without placing the defendant on probation the stay is unlawful. 41 Atty. Gen. 338.

973.08 History: 1969 c. 255; Stats. 1969 s. 973.08.

Comment of Judicial Council, 1969: This is comparable to present s. 959.052 except that it abolishes certificates of conviction and other commitment forms and substitutes a copy of the judgment. The requirement on filing transcripts within 120 days is designed to insure that transcripts are available promptly for use by authorities at the prison. Investigation by the Council indicated that many counties are very slow in forwarding transcripts. Appeals are delayed and transcripts are not available when the parole board considers a prisoner for release. Both of these reasons justify a requirement that transcripts be forwarded promptly. [Bill 603-A]

973.09 History: 1969 c. 255; Stats. 1969 s. 973.09.

Comment of Judicial Council, 1969: This is a modification of present s. 57.01. The principal change is that all judges may now impose reasonable and appropriate conditions for probation. Previously this discretion was only vested in Milwaukee county judges. There is no basis for any distinction. [Bill 603-A]

Editor's Note: 57.04, Stats. 1967, and predecessor statutes governed the subject of probation of persons convicted of misdemeanors; 57.04, Stats. 1967, was repealed by ch. 255, Laws 1969, and superseded by 973.09, Stats. 1969.

1. General.
2. Probation in felony cases.
3. Probation in misdemeanor cases.

1. General.

The probation system of the state is in the interests of society as a whole and of transgressors of the law in particular; and the statutes relating to probation (57.01 et seq., Stats. 1943), must have a reasonable common-sense interpretation. State ex rel. Vanderhei v. Murphy, 246 W 168, 16 NW (2d) 413.

Probation is not a matter of right, but is conferred as a privilege on the withholding of sentence or the staying of its execution. State v. Scherr, 9 W (2d) 418, 101 NW (2d) 77.

Under 57.01 and 57.04, Stats. 1951, execution of a sentence imposing a fine may be stayed and the defendant placed on probation; stay of execution without placing a defendant on probation is unlawful. 41 Atty. Gen. 338.

Costs of prosecution and restitution as conditions of probation. Frederick, 1962 WLR 672.

2. Probation in Felony Cases.

57.01, Stats. 1921, does not authorize the suspension of judgment after conviction and the placing of the defendant on probation at a time when the court has lost jurisdiction because of removal of the case to the supreme court on certiorari. It could not revise its sentence in a criminal case. State ex rel. Zabel v. Municipal Court, 179 W 195, 190 NW 121.

The defendant cannot insist on the terms of probation and should not be allowed to strike a bargain with the prosecutor or the court on the matter of restitution as a condition for probation, and neither should the criminal process be used to supplement a civil suit or as a threat to coerce the payment of a civil liability and thus reduce the criminal court to a collection agency. The procedure of determining the amount of restitution by means of a reference proceeding cannot be recommended, but a defendant who agrees to a reference for that purpose should be bound by such agreement to the extent that it is valid. State v. Scherr, 9 W (2d) 418, 101 NW (2d) 77.

The amount of restitution which the court orders as a condition of probation is not limited to the amount charged in the information, but it cannot go beyond the amount for which the defendant was convicted or which he freely admits. State v. Scherr, 9 W (2d) 418, 101 NW (2d) 77.

57.01 (1), in granting the court the power to impose as a condition of probation the making of restitution, either at the time when the defendant is placed on probation or as a condition for continuing probation, contemplates that the jurisdiction of the court in probation matters does not end with the term of the court during which the defendant was convicted. State v. Scherr, 9 W (2d) 418, 101 NW (2d) 77.

57.01 (1), Stats. 1959, authorizing the court as a condition of probation to impose the costs of prosecution against a person convicted of a felony, was not affected by later-enacted 959.055, authorizing the court to sentence a defendant to pay the costs of prosecution when a fine is imposed, and limiting the items of costs taxable to certain specific items, so that there existed no statutory bar to the trial court's requiring the defendant in an embez-

zlement (felony) case to pay as costs of prosecution the expense of the special prosecutor's fees and the costs of an audit as a condition to the defendant's probation. State v. Welkos, 14 W (2d) 186, 109 NW (2d) 889.

A person convicted of a felony, sentenced to prison and placed on probation under stay of sentence, may legally become a party to a contract. 25 Atty. Gen. 213.

When a person is convicted of one offense and placed on probation and subsequently sentence is imposed for another offense committed prior to probation, the sentence and probation run concurrently. 25 Atty. Gen. 539.

The period of probation does not count toward the serving of a sentence and is not deducted from the sentence to be served in case probation is revoked. 30 Atty. Gen. 278.

Under 57.01 (1) and (4) the court may not order probation of a defendant convicted of a felony to the sheriff for 6 months to be followed by 2½ years' probation to the state department of public welfare, and such department has no authority to exercise control over defendant pursuant to any such order. 37 Atty. Gen. 132.

3. Probation in Misdemeanor Cases.

Under 57.04, Stats. 1927, the court is authorized, in its discretion, to place a defendant on probation and to impose sentence at any time before the end of the probation period. It is better practice for the court, in placing a defendant on probation, to place him in the custody of some officer other than the judge of the court that imposed sentence. Brozosky v. State, 197 W 446, 222 NW 311.

Where probation was revoked after a probationer pleaded guilty to 2 misdemeanors but the revocation was based on general violations of the terms of probation including other acts than the misdemeanors, the revocation will stand even though the conviction on the misdemeanors is set aside and a new trial ordered. Hughes v. State, 28 W (2d) 665, 137 NW (2d) 439.

After a man has served part of his term a court has no power under 57.04, Stats. 1935, to put him on probation or discharge him. 24 Atty. Gen. 648.

Courts of record have no power to suspend execution of a sentence of imprisonment, in default of payment of fine and costs imposed in a criminal case, without placing a defendant on probation under 57.04, Stats. 1943. If an unlawful stay of execution is granted, period of imprisonment runs notwithstanding and defendant may not be committed or held after expiration thereof. 32 Atty. Gen. 228.

The department of public welfare has no authority to grant a discharge to a person on probation under 57.04, Stats. 1943, either during the term of probation or at its expiration. Discharge at end of term is automatic. Power to discharge a probationer before the end of the term is vested exclusively in the court by 57.04 (3). A person placed on probation for abandonment under 351.30 (4) without having been convicted may not be placed in custody of the department. This section applies only if there has been a conviction. No supervision of such probationer is contemplated by 351.30 and revocation may only be had for violation of the court's order to pay support money. 33 Atty. Gen. 201.

Violation of a municipal ordinance is not a "misdemeanor" within the meaning of 57.04, Stats. 1945, even if the act forbidden by the ordinance is also a violation of the state criminal law. Accordingly, the department of public welfare has no authority to receive and supervise on probation persons convicted of violating municipal ordinances. 34 Atty. Gen. 412.

973.10 History: 1969 c. 255; Stats. 1969 s. 973.10.

Comment of Judicial Council, 1969: This is a restatement of language in present ss. 57.02, 57.03 (1) and 57.15. [Bill 603-A]

The fact that a probationer has to obtain the consent of his supervising officer to a change of residence, and does so, does not prevent him from establishing a legal residence in another county. Marathon County v. Milwaukee County, 273 W 541, 79 NW (2d) 233.

When placed on probation, probationers' earnings are under the control of the state board of control. 4 Atty. Gen. 959.

The state board of control must, upon violation of probation, order the probationer brought before the court for sentence, or, if already sentenced, must order him imprisoned. Inability to comply with a court order relative to employment, restitution and payment of costs due to physical disability of the probationer, constitutes violation of probation. 15 Atty. Gen. 158.

In case a person violates his parole, is thereafter committed by the court to the state reformatory and arrives at such institution April 20, a sentence which provides that it start when he was placed on probation is erroneous and should be amended to provide that sentence commence April 20. 18 Atty. Gen. 243.

Where probation of a felon has been revoked by the state board of control, an order of circuit court revoking probation is null and void, as the court has no jurisdiction. 22 Atty. Gen. 86.

Money collected and deposited by the probation and parole department of the state board of control is a public deposit within the meaning of ch. 34. Said department is protected against loss of such money the same as are other public deposits in case of a bank failure. 27 Atty. Gen. 388.

Where A was sentenced to the state prison for 2 years and the sentence was suspended and defendant placed on probation to the state board of control, a subsequent sentence for violation of parole "for balance of said 2-year term as provided by law" is construed to mean that the 2-year sentence starts on the date the prisoner is received at the state prison as provided by 57.03, Stats. 1937. 27 Atty. Gen. 821.

During a period of probation the department has exclusive jurisdiction to revoke such probation or to discharge a probationer from further supervision in the exercise of sound discretion. 31 Atty. Gen. 204.

Where a probationer is received at the state

prison pursuant to a sentence for a new offense and his probation is subsequently revoked, the suspended sentence for which he was on probation is deemed to have commenced running on the date he was first received at the prison pursuant to his second conviction and sentence. 33 Atty. Gen. 83.

973.11 History: 1969 c. 255; Stats. 1969 s. 973.11.

Comment of Judicial Council, 1969: This is a restatement of s. 57.025 and is designed, with s. 973.09, to provide the same powers to probation officers in all counties of the state. [Bill 603-A]

Editor's Note: Sec. 57.025, Stats. 1951, was considered in State v. Schlueter, 262 W 602, 55 NW (2d) 878.

973.12 History: 1969 c. 255; Stats. 1969 s. 973.12.

Comment of Judicial Council, 1969: Sub. (1) is present s. 959.12 (1). Sub. (2) is present s. 959.12 (2). [Bill 603-A]

Where the defendant admits a former conviction, it is erroneous to receive evidence thereof. Howard v. State, 139 W 529, 121 NW 133.

The imposition of a sentence on the basis of a prior conviction which was charged in the information but not proved is improper. Green Bay F. Co. v. State, 186 W 330, 202 NW 667.

Where no specific penalty is provided for second offenders the case comes under 359.14, Stats. 1925. Degutes v. State, 189 W 435, 207 NW 948.

Prior conviction if proved goes to the amount of punishment but does not create a new substantive offense. Watson v. State, 190 W 245, 208 NW 897.

Where the prior conviction was under 165.01, Stats. 1925, the penalty being fixed by a provision of that section, defendant should have been sentenced under said provision and not under 359.14. Barry v. State, 190 W 613, 209 NW 598.

No proof of former convictions is required where such convictions were admitted by the defendant. Meyers v. State, 193 W 126, 213 NW 645.

Although the defendant had been convicted on 2 counts under an information charging violations of the state prohibition law, and there was evidence that the offenses constituted second offenses, it was error to sentence him as for 3 separate offenses. Mundon v. State, 196 W 469, 220 NW 650.

The statute prescribing punishment in cases where defendant has been previously convicted of criminal offenses is permissive rather than compulsory. Piper v. State, 202 W 58, 231 NW 162.

Where defendant pleaded guilty to a charge of obtaining $20 in money by false pretenses, and the trial court, before sentence, ascertained that defendant previously had been convicted of a felony, which also was admitted by defendant, and such admission was made part of the record by stipulation, imposition of a sentence of one to 5 years under the "repeater" statute did not constitute error although the information did not charge prior conviction. (Belter v. State, 178 W 57, distinguished.) Spoo v. State, 219 W 285, 262 NW 696.

Where the first 2 counts of an information charged offenses punishable by fine or imprisonment in the county jail, and the last 3 counts merely alleged previous convictions which would render the defendant amenable to sentence as a repeater under 359.14, and the defendant pleaded guilty to each count, the trial court erred in imposing sentence on the last 3 counts as though they had charged and as though there were convictions under them of separate substantive offenses other than the offenses charged in the first 2 counts, since the sole office of 359.14 is to increase the penalty for the subsequent offense of which the defendant is convicted, and not to make the defendant guilty of a separate offense for which he may be sentenced. State v. Miller, 239 W 334, 1 NW (2d) 178.

An information charging assault with intent to commit rape, and in a separate paragraph stating an unreversed previous conviction of a felony was strictly in accordance with 359.12, Stats. 1941. State v. Sullivan, 241 W 276, 5 NW (2d) 798.

Where a defendant had been convicted of the prior offense of robbery by means of firearms and was convicted in the instant prosecution of violations of the game laws, he could be sentenced either under the general repeater statute or under the game-law penalty statute, at the election of the court having jurisdiction. State v. Meyer, 258 W 326, 46 NW (2d) 341.

If former convictions are alleged and admitted, then they are proved within the meaning of the repeater statute and no evidence of the former convictions should thereafter be received nor comment to the jury be permitted. State v. Meyer, 258 W 326, 46 NW (2d) 341.

Following the defendant's plea of not guilty to an information charging incest and alleging 2 prior convictions for larceny, the district attorney's introduction in evidence of the record of such prior convictions was proper. State v. Raether, 259 W 391, 48 NW (2d) 483.

So much of 1959 amendment to 959.12 as removed all reference to jury determination of issues as to previous conviction was enacted to eliminate the possibility of prejudice where the defendant was tried to a jury on the offense charged. Block v. State, 41 W (2d) 205, 163 NW (2d) 196.

Prior convictions alleged for the purpose of imposing a penalty under the repeater statute may be realleged in a subsequent repeater complaint for the purpose of imposing a repeater penalty for subsequent offense. 29 Atty. Gen. 59.

973.13 History: 1969 c. 255; Stats. 1969 s. 973.13.

Comment of Judicial Council, 1969: New. There is similar language in the present statutes which applies to repeaters only [see s. 959.12 (2)]. Obviously this corrective provision should apply to all sentences. It provides speedy administrative procedure for terminating illegally excessive sentences without burdening the courts. The section does

not preclude a prisoner from seeking relief under ch. 974. [Bill 603-A]

973.14 History: 1969 c. 255; Stats. 1969 s. 973.14.

Comment of Judicial Council, 1969: This section is designed to permit the administrative transfer of prisoners between local institutions within a county without the requirement of court proceedings. [Bill 603-A]

973.15 History: 1969 c. 255; Stats. 1969 s. 973.15.

Comment of Judicial Council, 1969: Present s. 959.07. [Bill 603-A]

A stay of execution granted by the trial court pending the determination of the case on a writ of error is in effect an order that the term of imprisonment shall not commence until the case is determined by the reviewing court, and is effectual to postpone the term of imprisonment as though a day had been named. State v. Grottkau, 73 W 589, 41 NW 80 and 1063.

Upon conviction of a defendant in a single trial of several distinct offenses, the court may impose separate sentences for each, making a term of imprisonment for one offense begin in the future upon the expiration or termination of the term imposed for one of the others. But upon successive convictions in separate trials the term for each begins upon the day of sentence, and any 2 or more that have not expired or that have been terminated run concurrently. Application of McDonald, 178 W 167, 189 NW 1029.

Where the court did not specify that a sentence imposed on a second count was to run concurrently with a sentence on the first count, the sentence for the second count commenced at expiration of the sentence for the first count. Final statement of the sentence orally pronounced constituted the sentence defendant must serve, where the court subsequently in defendant's absence restated the sentence in writing. Siegel v. State, 201 W 12, 229 NW 44.

Where defendant is convicted on 2 counts and the court imposed one sentence, defendant cannot object if the sentence is not in excess of the statutory maximum for any one conviction. State v. Christopherson, 36 W (2d) 574, 153 NW (2d) 631.

A sentence to the state prison ran concurrently with a sentence to the reformatory in the case of a prisoner who broke his parole, was sentenced to the state prison for one year, escaped from the sheriff on the way to prison and, on being recaptured, was returned to the reformatory, where he served the balance of the sentence, which was more than one year; the prisoner must be discharged at expiration of the term at the reformatory. 19 Atty. Gen. 13.

The phrase "the same to date from the day of original sentence" in commutation of a sentence does not relieve the prisoner from the provision that his sentence does not begin until actual imprisonment under it. 20 Atty. Gen. 54.

A commutation providing that a commuted sentence is "to commence as of the date of the commencement of the sentence imposed by the court" was not intended to refer to the date of pronouncement of the sentence where the sentence provided that the prisoner be held in the county jail as a material witness and that the period of such detention should be part of his term. 20 Atty. Gen. 806.

A sentence to begin at termination of imprisonment for former crime is valid. 21 Atty. Gen. 555.

Where defendant has been found guilty on 4 counts, the judgment sentencing him to indeterminate sentences to run consecutively after serving the minimum term for each count is valid. 21 Atty. Gen. 866.

Where defendant is sentenced on 2 counts, the second sentence to begin after service of minimum time under the first sentence, the sentences must be construed as consecutive. 25 Atty. Gen. 26.

Sentences of one to 3 years on each of 4 counts, the sentences for the first year to run consecutively and after that concurrently, are valid. 25 Atty. Gen. 108, 388.

Two or more sentences imposed by a court at the same time run concurrently unless the court at the time of imposition of the sentence specifies they shall run consecutively. 26 Atty. Gen. 439.

A sentence for a general indeterminate term of not less than one year and not more than 10 years, "in addition to the former sentence which you are now serving," is construed to mean that the sentence would commence at expiration of the sentence which the prisoner was then serving. 27 Atty. Gen. 601.

Commutation of a sentence is construed to mean that 2 sentences run concurrently after the second sentence was imposed. 28 Atty. Gen. 41.

When a convict on parole from the state prison violates his parole by committing a misdemeanor for which he is sentenced to a county jail or house of correction, the state prison sentence is tolled from the date of violation until he is returned to the state prison and time spent in the county jail or house of correction does not count toward service of such prison sentence. (30 Atty. Gen. 218 followed and applied.) 31 Atty. Gen. 24.

Sentences in the state prison and the Milwaukee county house of correction may run concurrently. 34 Atty. Gen. 163.

973.16 History: 1969 c. 255; Stats. 1969 s. 973.16.

Comment of Judicial Council, 1969: Present s. 959.08. [Bill 603-A]

973.17 History: 1969 c. 255; Stats. 1969 s. 973.17.

Comment of Judicial Council, 1969: Sub. (1) is present s. 959.10 restated.

Sub. (2) is language found in s. 954.017 except that this section is applicable to felonies as well as misdemeanors.

Sub. (3) is present s. 959.11. [Bill 603-A]

CHAPTER 974.

Appeals, New Trials and Writs of Error.

974.01 History: 1969 c. 255; Stats. 1969 s. 974.01.